

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

United States of America

v.

Devin Varela and Humberto Magana

CRIMINAL COMPLAINT

CASE NUMBER: 22-5022MJ

I, the undersigned complainant, being duly sworn, state that the following is true and correct to the best of my knowledge and belief:

On or about the dates described in Attachment A in the County of Maricopa in the District of Arizona, the defendants violated 18 U.S.C. §§ 922(a)(1)(A), 923(a), and 924(a)(1)(D), 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(vi), and 18 U.S.C § 924(a)(1)(A) and § 2 offenses described as follows:

See Attachment A – Description of Counts

I further state that I am a Special Agent from the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) and that this complaint is based on the following facts:

See Attachment B – Statement of Probable Cause Incorporated by Reference Herein.

Continued on the attached sheet and made a part hereof: ☒ Yes ☐ No

AUTHORIZED BY: Brett A. Day, AUSA BDay

SA Katherine Rottman, ATF

Name of Complainant



Signature of Complainant

Sworn to before me electronically

January 13, 2022 at 9:22 a.m.

Date

at Phoenix, Arizona

City and State

HONORABLE DEBORAH M. FINE

United States Magistrate Judge

Name & Title of Judicial Officer



Signature of Judicial Officer

ATTACHMENT A
DESCRIPTION OF COUNTS

COUNT 1

On or about December 13, 2021, in the District of Arizona, Defendant DEVIN VARELA, not being a licensed dealer of firearms within the meaning of Chapter 44, Title 18, United States Code, did willfully engage in the business of dealing in firearms.

In violation of Title 18, United States Code, Sections 922(a)(1)(A), 923(a), and 924(a)(1)(D).

COUNT 2

On or about December 13, 2021, in the District of Arizona, Defendant DEVIN VARELA did knowingly and intentionally possess with intent to distribute 40 grams or more of a mixture or substance containing a detectable amount of N-phenyl-N-[1-(2-phenylethyl)-4-piperidinyl] propanamide (fentanyl), a Schedule II controlled substance.

In violation of Title 21, United States Code, Sections 841(a)(1) and 841(b)(1)(B)(vi).

COUNT 3

On or about January 10, 2022, in the District of Arizona, Defendant HUMBERTO MAGANA, did knowingly aid and abet the making of false statements and representations to Ammo AZ, located in Phoenix, Arizona, a business licensed under the provisions of Chapter 44 of Title 18, United States Code, with respect to information required by the provisions of Chapter 44 of Title 18, United States Code, to be kept in the records of Ammo AZ, in that another person (D.H.) executed a Department of Justice, Bureau of Alcohol, Tobacco, Firearms, and Explosives Form 4473, Firearms Transaction Record, stating that she was the actual transferee or buyer of two (2) rifles, and was not buying these firearms on behalf of another person, whereas in truth and fact, the other person (D.H.) knew that she was buying the firearms on behalf of another person.

In violation of Title 18, United States Code, Section 924(a)(1)(A) and Section 2.

STATEMENT OF PROBABLE CAUSE

I, Katherine Rottman, a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), being duly sworn, hereby depose and state as follows:

INTRODUCTION AND AGENT BACKGROUND

1. I am a Special Agent with the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). I was appointed as a Special Agent in June 2020. I have received training in the enforcement of the Federal firearms and explosive laws. I have investigated individuals for federal firearms violations, which included firearms trafficking.

2. The facts in this Affidavit come from my personal observations, my training and experience, information obtained from other agents involved in the investigation, and information obtained from witnesses. Your Affiant knows that Title 18, United States Code (U.S.C.) § 922(a)(1)(A) makes it unlawful to engage in the business of dealing in firearms without a license, 18 U.S.C. § 924(a)(1)(A) makes it unlawful to provide false statements in records required to be kept by an FFL, and 18 U.S.C. § 922(o) makes it unlawful to transfer or possess a machinegun. Your Affiant also knows that it is a violation of 18 U.S.C. § 2(a) for any person who aids, abets, counsels, commands, induces, or procures the commission of an offense against the United States. Your Affiant also knows that 21 U.S.C. §§ 841(a)(1) makes it unlawful for a person to knowingly and intentionally possess with intent to distribute a controlled substance.

PROBABLE CAUSE

3. As of October 2021, ATF has been investigating the activities of DEVIN VARELA (VARELA) and HUMBERTO MAGANA (MAGANA) regarding violations of 18 U.S.C. § 922(a)(1)(A), 18 U.S.C. § 924(a)(1)(A), 18, U.S.C. § 922(o), and 21 U.S.C. § 841(a)(1).

4. On October 27, 2021, ATF began an investigation into Jorge Antonio Huerta Jr. (Huerta) based upon his purchase of multiple firearms, many of the same make and model. Huerta is currently pending charges in United States District Court, District of Arizona. Law enforcement recovered two of the firearms purchased by Huerta in a vehicle where Devin VARELA claimed ownership of both guns, following a drive-by shooting in Phoenix, Arizona.

5. Your Affiant has received information that VARELA and MAGANA are placing orders for firearms from local Federal Firearms Licensees (FFLs) and receiving firearms that were purchased for them by other people.

6. On November 3, 2021, your Affiant received information that Huerta had purchased a total of 35 firearms since June 22, 2021.

7. Six of the firearms Huerta purchased have been recovered at crime scenes in Phoenix, Arizona. On October 24, 2021, Phoenix Police Department (PPD) responded to reports of gunshots being fired at a large house party located at 78th Ave. in Phoenix, Arizona. While PPD was at the scene, they heard several additional gunshots. The reporting party notified PPD that a red Ford truck bearing AZ plate A3A23E was responsible for the gunshots. PPD located the red Ford F-150 truck bearing AZ plate

A3A23E and recovered three firearms. Two of the recovered firearms were purchased by Huerta 6-days, and 10-days prior to their recovery.

8. PPD identified one of the occupants inside the red Ford truck as DEVIN VARELA. VARELA admitted to ownership of the three recovered firearms, as well as admitted ownership of the Red Ford F-150 truck bearing AZ plate A3A23E.

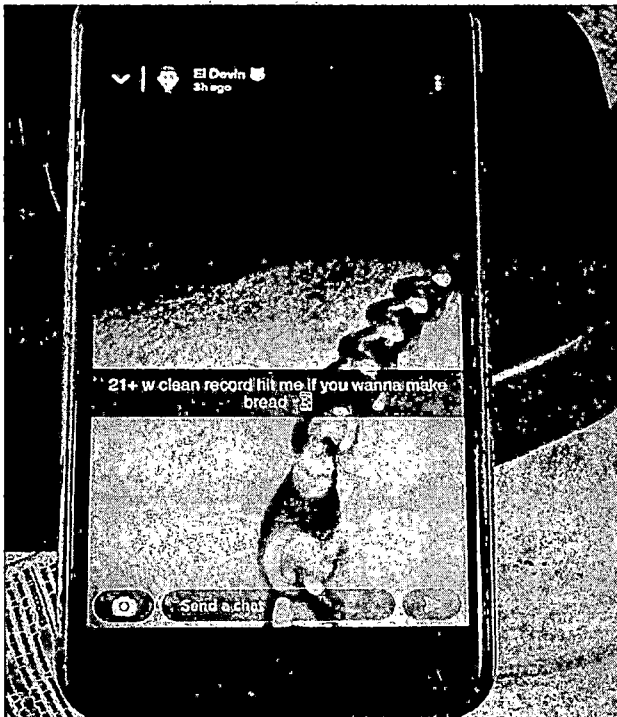
9. On November 8, 2021, Huerta purchased a total of five Glock 19x 9mm pistols at various FFLs in the Phoenix area. One of those Glock purchases occurred at FFL Glockmeister, located in Phoenix, Arizona.

10. On November 12, 2021, Huerta arrived at Scottsdale Gun Club at 11:06 a.m. Huerta purchased one Micro Draco pistol bearing serial number 21PMD-25895, and one FN Five Seven pistol bearing 386412643.

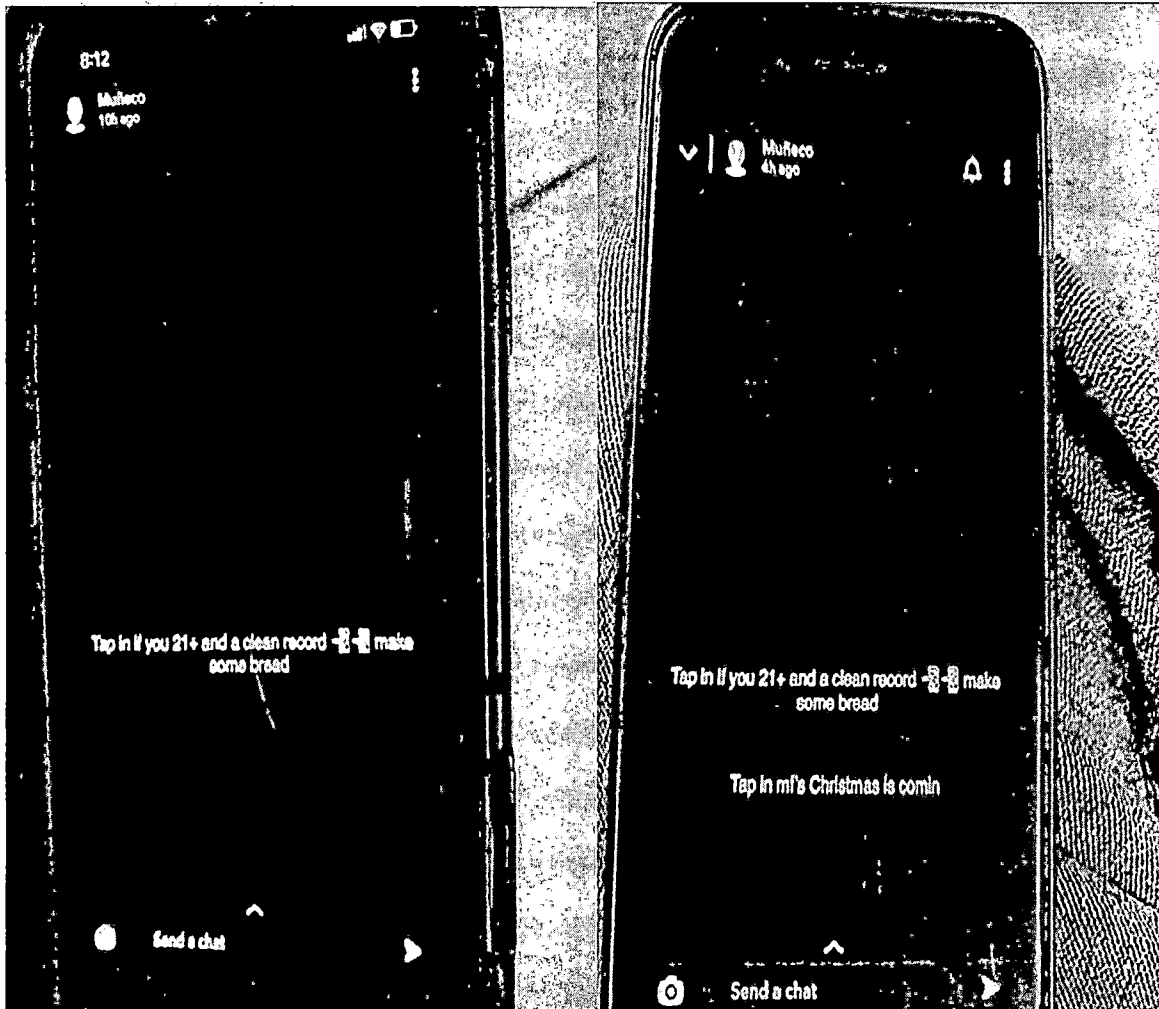
11. On November 16, 2021, Huerta left his residence at 8:09 a.m. Huerta then drove to Bear Arms, located at 10321 N. Scottsdale Rd., Scottsdale, AZ 85253, and purchased a FN pistol bearing serial number 386413559. Surveillance units observed Huerta leave Bear Arms with a gun box, drive to 1600 E. Camelback Road, and meet a Hispanic male in a Red Ford F-150 pickup truck, bearing AZ plate A3A23E. Huerta handed the gun box off to the Hispanic male in the driver's seat. Surveillance units observed the Hispanic male in the Red Ford F-150 drive across the street and hand the gun box to Jesus Cavares. Surveillance units developed probable cause for a stop of Cavares, and when units attempted to stop Cavares, units observed the FN pistol bearing serial number 386413559 fall out of Cavares's vehicle when Cavares attempted to flee from police.

12. In the vehicle, at the foot of the passenger's seat, PPD officers observed a Micro Draco pistol bearing serial number 21PMD-25895, same as the Micro Draco pistol purchased by Huerta four days prior on November 12, 2021 from Scottsdale Gun Club. In addition to the two pistols recovered which were previously purchased by Huerta, law enforcement also recovered approximately 12,000 fentanyl pills in Cavares' vehicle. Cavares is pending state charges in Maricopa County Superior Court.

13. After the arrest of Cavares, ATF agents and Task Force Officers (TFOs) began monitoring VARELA and MAGANA's Snapchat accounts, identified as "El Devin" and "Muñeco" respectively. In both VARELA and MAGANA's Snapchat accounts, agents have identified postings which indicate that they are recruiting straw purchasers of firearms. On November 27, 2021, VARELA posted a Snapchat that stated "21+ w a clean record hit me if you wanna make bread" (see photo).



14. Similarly, MAGANA has also been posting similar solicitations on his own Snapchat account (Muñeco). The postings by VARELA and MAGANA often occur contemporaneous to each other.



15. The postings indicate that VARELA and MAGANA are looking for straw purchasers over 21 years of age, because individuals can only legally purchase handguns after the age of 21. They are also looking for straw purchasers with a “clean record” because they need someone who can pass a background check at an FFL.

16. At the direction of ATF special agents, CI-7674 (CI-1) began monitoring VARELA's Snapchat account, "el Devin," which VARELA then changed to "El Devin LT."

17. On December 12, 2021, CI-1 observed an advertisement on VARELA's account for fentanyl pills and a Glock firearm with a fully automatic conversion device attached. Such a conversion device will convert a semi-automatic Glock firearm to fully automatic, such that it will fire multiple rounds with a single trigger pull. By definition, the conversion device will convert the semi-automatic Glock pistol into a machinegun in violation of 18 U.S.C. § 922(o).

18. Under the direction of ATF, CI-1 contacted VARELA to set up a purchase of the firearm and the fentanyl pills. VARELA told CI-1 that the Glock with the conversion device would be \$1,700 and that the fentanyl pills would be \$1.40 per pill. CI-1 agreed to purchase the firearm and 1,500 fentanyl pills at this price. VARELA agreed to meet CI-1 at Metro Center mall on December 13, 2021 at approximately 1 p.m.

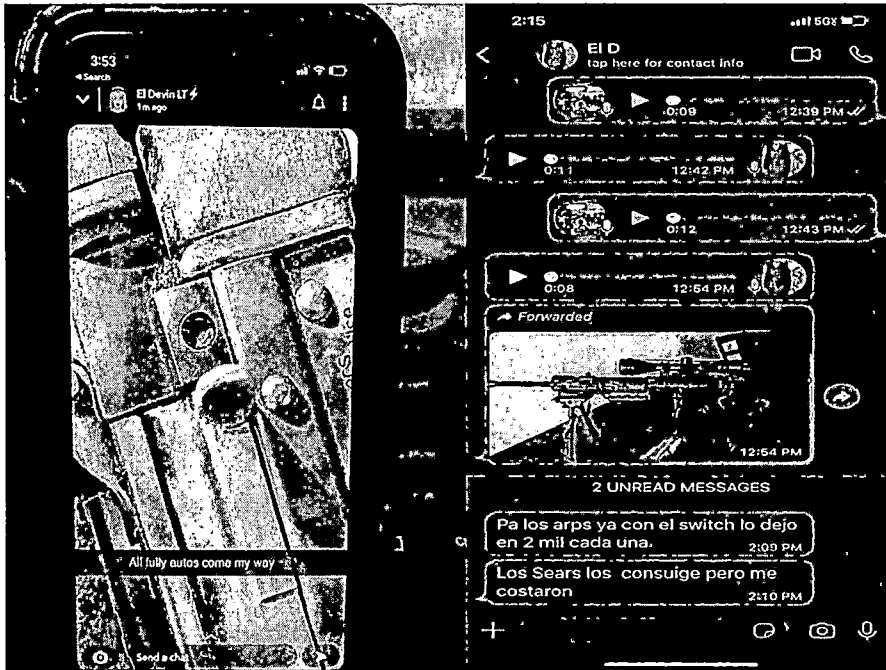
19. On December 13, 2021, at approximately 12 p.m., ATF agents met with CI-1 at a pre-determined staging location and provided CI-1 with \$4,000 in government funds to complete the transaction. At approximately 12:52 p.m., ATF agents used both audio and visual surveillance to observe the transaction between CI-1 and VARELA. Agents observed VARELA pull up to the driver's side of CI-1's vehicle. CI-1 exited his/her vehicle and stood at the passenger door of VARELA's vehicle, a red Ford F-150 truck bearing AZ plate A3A23E. VARELA was in the passenger's seat of the vehicle, and an unknown Hispanic male was driving. VARELA had a Glock case on his lap, and both the

firearm and fentanyl pills were inside the case. VARELA handed the case to CI-1, and informed CI-1 that he could get CI-1 an additional 25,000 to 30,000 fentanyl pills if CI-1 gave VARELA enough notice.

20. CI-1 paid VARELA \$4,000 cash for the firearm with the conversion device and the fentanyl pills. After the transaction was concluded, VARELA departed the location. The fentanyl pills were released to the PPD lab for testing, where they tested positive for fentanyl, and weighed 162.85 grams.

21. On December 15, 2021, VARELA and CI-1 discussed another purchase. VARELA agreed to sell CI-1 three AR pistols, each with fully automatic conversion devices for \$1,700 per firearm and 3,000 fentanyl pills at the price of \$1.00 per pill. VARELA agreed to meet CI-1 at Metro Center mall on December 16, 2021 at approximately 2 p.m. to conduct the transaction. Again, ATF agents monitored the transaction with both audio and visual surveillance.

22. At approximately 2:30 p.m., CI-1 met VARELA in the parking lot. VARELA arrived at the location in the red Ford F-150 truck. VARELA was driving the red Ford F-150 truck and an unknown Hispanic male was in the passenger's seat. VARELA pulled up to the driver's side of CI-1's vehicle. CI-1 exited his/her vehicle and stood at the passenger door of the red Ford F-150 truck.

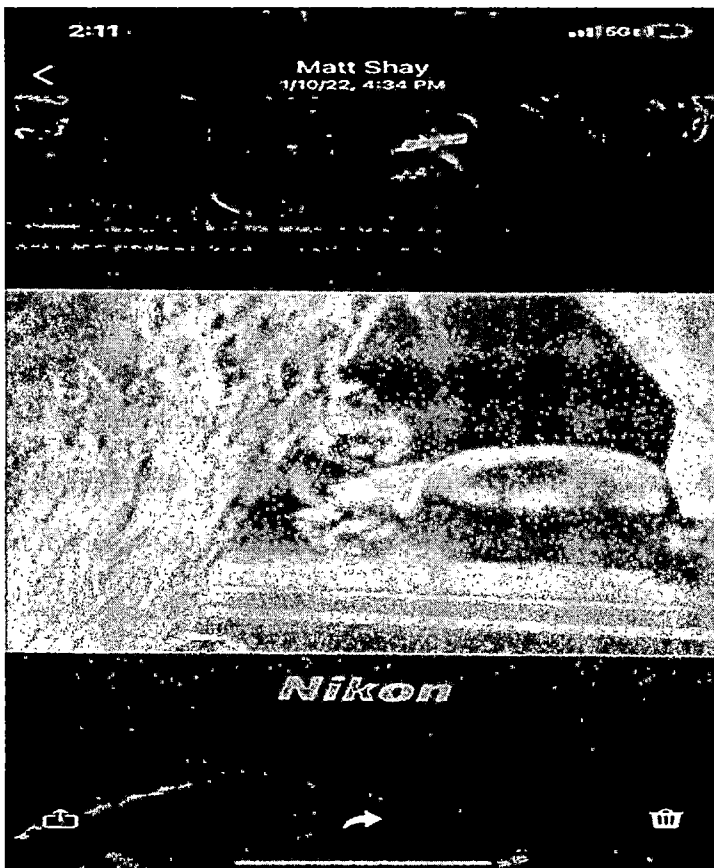


23. The unknown Hispanic male had the fentanyl pills in his jacket and handed them to CI-1. The unknown Hispanic male also placed a duffle bag containing the three firearms in the backseat of CI-1's vehicle. VARELA told CI-1 prior to the deal that only one of the conversion devices had been installed in the firearms, and that the other two conversion devices were in the bag but not installed in the firearms. The Hispanic male passenger told CI-1 that he builds the guns out himself, and if CI-1 wanted, the passenger could get CI-1 25,000 to 30,000 fentanyl pills. CI-1 paid VARELA \$8,100 cash for the firearms, conversion devices, and the fentanyl pills. The fentanyl pills were released to PPD lab for testing, where they tested positive for fentanyl, and weighed 330.63 grams.

24. On January 10, 2022, while attempting to set up a future deal with VARELA, CI-1 asked for photos of the firearms VARELA was offering for sale. VARELA responded in a voice message stating in Spanish, "Let me go home and then I'll send you some photos."

25. VARELA then told CI-1 that he was going to purchase more firearms to sell to CI-1 as he had already sold the previously advertised firearms. VARELA told CI-1 that he was going to Ammo AZ, a Federal Firearms Licensee (FFL), to conduct the purchase.

26. At approximately 4:15 p.m., VARELA and MAGANA arrive near Ammo AZ in the red Ford F-150 truck. VARELA was the driver of the vehicle. Surveillance units observed MAGANA count out cash, and then hand the cash to a Hispanic female identified as the straw purchaser. After receiving the cash, the straw purchaser then entered Ammo AZ and purchased two Pioneer Armament Rifles.



27. The straw purchaser then returned to the red Ford F-150 truck, where surveillance units observed her hand two rifle gun boxes to VARELA, who then placed the cases in the

rear seat of the red Ford F-150 truck. MAGANA then handed the straw purchaser more cash, and MAGANA and VARELA departed in the red Ford F-150 truck with the gun cases. At 5:19 p.m., the red Ford F-150 truck was seen arriving at VARELA's residence on a pole camera. Both VARELA and MAGANA exited the vehicle and entered the residence. At 5:29 p.m., VARELA sent CI-1 a photo of a rifle that matches the make and model of the firearm purchased about an hour prior at Ammo AZ.



28. At approximately 6:17 p.m., VARELA posted a video of a large number of firearms on top of a vehicle inside a garage. At this time, VARELA's vehicle was parked at the

residence after returning from the straw purchase, and VARELA and MAGANA were not seen leaving the residence after returning at 5:19pm.



29. At approximately 6:23 p.m., a male matching the description of MAGANA loaded a rifle box matching the rifle purchased earlier in the day into the backseat of the red Ford F-150 truck. VARELA and the male matching the description of MAGANA got into the red Ford F-150 truck and arrived at MAGANA's residence at 1506 E. Fremont Road at approximately 6:50 p.m. The male matching the description of MAGANA exited the vehicle and entered the Fremont address.

30. On January 11, 2021, MAGANA posted a video of himself on his Snapchat account, Muñeco. The individual in the video appears to be MAGANA based upon physical description, the fact that the video was self-taken, and then posted to MAGANA's Snapchat account, Muñeco. The video shows what appears to be a black, semi-automatic handgun with an extended magazine in MAGANA's pants pocket.

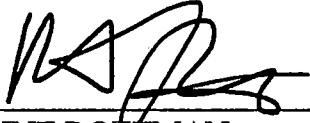
31. On March 10, 2021, MAGANA was arrested by PPD and charged with possession of a weapon by a prohibited person, a felony offense, in Maricopa County Superior Court. MAGANA is currently under indictment and on pre-trial release for this offense. One of MAGANA's conditions of release is that he may not possess firearms.

32. On March 15, 2021, MAGANA was arrested by PPD and charged with sexual misconduct with a minor, a felony offense, in Maricopa County Superior Court. MAGANA had his initial appearance on March 16, 2021, and is currently under indictment and on pre-trial release. One of MAGANA'S conditions of release is that he may not possess firearms.

CONCLUSION

33. For these reasons, your Affiant submits that there is probable cause to believe DEVIN VARELA committed the crime of engaging in the business of dealing in firearms without a license, in violation of 18 U.S.C. §§ 922(a)(1)(A), 923(a), and 924(a)(1)(D), and knowingly and intentionally possessing with intent to distribute a controlled substance (fentanyl), in violation of 21 U.S.C. §§ 841(a)(1) and 841(b)(1)(B)(vi), and HUMBERTO MAGANA committed the crime of aiding and abetting a person providing false statements in records required to be kept by an FFL, in violation of 18 U.S.C. §§ 924(a)(1)(A) and 2.

34. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



KATHERINE ROTTMAN

Special Agent

Bureau of Alcohol, Tobacco, Firearms and Explosives

Sworn to and subscribed electronically this 13th day of January, 2022 at 9:22 a.m.



HONORABLE DEBORAH M. FINE

United States Magistrate Judge